BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96–98
Inter–Carrier Compensation for ISP–Bound Traffic	CC Docket No. 99–68

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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April 27, 1999

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Summary

In these Reply Comments, GSA responds to claims by some parties that local exchange carriers should have additional compensation for handling traffic bound to Internet service providers ("ISPs"). The ISPs are providing LECs with significant interstate revenues from SLCs, as well as intrastate revenues from business exchange lines leased under local tariffs. Additional charges for access to telecommunications networks are not necessary, and they may impair development of Internet services.

Some parties contend that the Commission should remove the authority for negotiating inter–carrier compensation plans for ISP–bound traffic from state regulatory agencies. GSA urges the Commission to reject these requests. Agreements negotiated under the auspices of state commissions will more closely reflect local conditions. Moreover, as GSA explains, negotiation of inter–carrier compensation rates pursuant to sections 251 and 252 of the Telecommunications Act is appropriate even through ISP–bound traffic is jurisdictionally mixed.

Contrary to requests by some parties, the Commission should not mandate a uniform national inter–carrier compensation rate. However, the Commission should provide definitive guidelines for inter–carrier compensation plans to ensure that they do not contain features that could inhibit competition for any telecommunications services. Some competitive LECs report that incumbent carriers have provided compensation for termination ISP-bound traffic only when specifically directed by regulatory authorities or courts. Therefore, the guidelines should specify that regulators will intervene if carriers do not formulate compensation plans within a reasonable period of time. Moreover, guidelines should require the compensation plans to be reasonably symmetric, and reflect underlying costs for forward–looking network configurations.

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REPLY COMMENTS
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GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Declaratory Ruling and Notice of Proposed Rulemaking ("Declaratory Ruling and Notice") released on February 26, 1999. The Declaratory Ruling and Notice presents several tentative conclusions concerning charges for traffic delivered to firms providing information services, particularly Internet service providers ("ISPs").

I. INTRODUCTION

The Internet provides government agencies, businesses, and individuals with the ability to communicate and obtain information through a worldwide network of interconnected computers. Services offered by ISPs are vital to Federal agencies because they allow employees to communicate over broadband channels, to access data available from many sources, and to maintain many vital information links with the public. From this perspective, GSA urges the Commission to take the steps necessary

to ensure that the Internet will continue to offer a platform for access to an expanding array of information and advanced services.

GSA submitted Comments in this proceeding on April 12, 1999. In those Comments, GSA explained that ISPs now pay for access to telecommunications networks through subscriber line charges at the maximum monthly rate applicable to end users, and ISP–bound traffic should not be subject to additional access charges. Also, GSA explained that inter–carrier compensation for this traffic should be governed by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Telecommunications Act, subject to guidelines established by the Commission, to ensure that compensation plans do not contain features that could inhibit competition.

More than 30 additional parties submitted comments in response to the Declaratory Ruling and Notice. These parties include:

- 8 incumbent local exchange carriers ("LECs") and associations of these carriers;
- 16 interexchange carriers ("IXCs") and competitive LECs;
- a wireless carrier and an association of these carriers;
- an ISP and 2 associations of these firms;
- 4 state regulatory agencies;
- an association of end users of telecommunications services.

In these Reply Comments, GSA responds to the positions advanced by these parties.

II. THE COMMISSION SHOULD REJECT CLAIMS THAT INCUMBENT LOCAL EXCHANGE CARRIERS NEED ADDITIONAL COMPENSATION FOR INTERNET TRAFFIC.

A. Existing compensation plans have permitted consumers to access Internet services without usage charges.

Comments in response to the Declaratory Ruling and Notice demonstrate that thousands of firms in the information technology industry are competing to provide the public with a wide variety of information products and services, including Internet access and other on–line information services.[1] This intense competition has permitted nearly all consumers to access the Internet at reasonable costs. Moreover, most consumers have been able to communicate and obtain services over the Internet without charges depending on their use of the network. This rate structure has been feasible only because ISPs have paid for access to the public switched network through non–traffic sensitive monthly subscriber line charges ("SLCs"), rather than through usage–sensitive access fees levied on interchange carriers.

As GSA explained in its Comments, a primary requirement for continued growth of Internet services is to maintain this pricing structure, which provides that enhanced service providers are treated as end users for the purpose of applying access charges.[2] Although none of the parties submitting comments in response to the Declaratory Ruling and Notice recommend that ISPs be placed under the access charge regime for common carriers, two commenting parties suggest that the Commission should establish some type of new fee structure to compensate LECs for carrying Internet traffic. GSA urges the Commission to reject these proposals.

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1 Comments of the Information Technology Association of America ("ITAA"), pp. 2-3; and Comments of the Commercial Internet eXchgange Association ("CIX"), pp. 1–3.

2 Comments of GSA, pp. 5–7, citing Declaratory Ruling and Notice, para. 5, n. 9.

One of the parties recommending additional compensation is ICORE, Inc. ("ICORE"), a consulting firm submitting comments on behalf of small incumbent LECs. In its comments, ICORE asserts that increasing Internet usage is requiring incumbent LECs to add facilities, especially Extended Area Service ("EAS") trunks between local switching centers.[3] According to ICORE, the Commission should ensure that procedures are implemented to help LECs recover Internet–related EAS costs.[4] In its comments, ICORE outlines several alternatives, including LEC dedication of inter–office trunks for Internet traffic "with the cost passed on to the ISP or their customers" and "usage–sensitive pricing for ISP customers using EAS facilities."[5]

The Commission should not heed claims that incumbent LECs require additional compensation because of demands on usage–sensitive facilities such as EAS circuits and switches because of the growth of Internet traffic. Most of the increase in Internet traffic has occurred since passage of the Telecommunications Act and the subsequent emergence of competitive LECs as a major facilities resource in local markets.[6] As Global NAPs explains in its comments, competitive LECs configure their networks to handle the high concentrations of traffic received by the ISPs, while the LECs concentrate on subscribers with lower than average traffic levels.[7] Indeed, Global NAPs notes:

> CLECs actually like doing business with ISPs, and treat them as valued customers. Incumbent LECs for the most part do business

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3 Comments of ICORE, pp. 2–3.

4 *Id.*, p. 7.

5 *Id.*

6 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act")

7 Comments of Global NAPS, Inc. ("Global NAPS"), p. 4.

> with ISPs only begrudgingly, and when they do, they attempt to fit them into ratepayer models designed for an earlier era.[8]

Under these circumstances, incumbent LECs should not be rewarded with revenues from per–minutes charges for Internet traffic.

Moreover, as GSA has explained, all ISPs are meeting their proportionate obligations to cover the costs of interstate access under the existing rules.[9] These firms — like all other telecommunications users — have appropriately paid for access to the public switched network through monthly subscriber line charges ("SLCs") on the facilities they obtain from the local exchange carriers ("LECs").

As discussed in the Declaratory Ruling and Notice, all enhanced service providers, including ISPs, are treated as end users in assessing obligations for interstate access charges.[10] Thus, the Commission permits these firms to obtain their links to the public switched network through intrastate local exchange tariffs, rather than interstate access tariffs.[11] Under this arrangement, the ISPs pay business local exchange service rates and the associated SLCs for switched access connections to LEC central offices.

In a study submitted to the Commission in 1997, a group of ISPs described the access arrangements that they employ.[12] These firms explained that various types of rate plans are employed by local exchange carriers to recover the costs of the access

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8 *Id.*, p. 3.

9 Comments of GSA, pp. 7–8.

10 Declaratory Ruling and Notice, para. 5.

11 *ESP Exemption Order*, 2635 n.8, 2637 n. 53.

12 In the Matter of Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98–147 *et al.*, "The Effect of Internet Use on the Nation's Telephone Network," study accompanying filing of Internet Access Coalition, January 22, 1997, pp. 13–15.

facilities.[13] For example, an ISP may lease 24 lines at the rates applicable to digital trunk groups or at the rates specified for an Integrated Switched Digital Network ("ISDN") primary rate interface.

In all configurations, the Commission's access charge rules require application of the interstate SLC to each access channel. As for any other business end user, an ISP deriving multiple channels from a DS–1 is required to pay the full interstate SLC for each transmission path. At the end of 1998, the per–line SLC for multi–line business customers of price cap carriers averaged $7.11 a month, more than two times the average monthly charge for primary residence and single business lines, and 40 percent above the average monthly charge for non–primary residence lines.[14] Moreover, the monthly charges for the business local exchange lines on which these SLCs are assessed are typically much greater than the corresponding monthly charges for residence local exchange lines.[15]

In summary, ISPs are providing LECs with significant interstate revenues from SLCs and intrastate revenues from business line charges. Additional charges for access to the network are not necessary, nor will they be beneficial for the further development of Internet services.

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13 *Id.*

14 Comments of GSA, p. 20.

15 The "Reference Book on Rates, Price Indices, and Expenditures for Telephone Service," published by the Commission's Industry Analysis Division in July 1998, shows the average total monthly charges for local exchange service in urban areas in October 1997, the latest period for which these data are available. Excluding SLCs, residence subscribers paid $15.95 monthly for flat rate service, while business subscribers with a PBX trunk paid $53.81 monthly — more than three times as much. *Id.*, Tables 1.1 and 1.17. Charges for message and measured services for business users were also greater than for residence users. *Id.*

B. The Commission has correctly determined that ISP–bound traffic is jurisdictionally mixed.

The Telephone Association of New England ("TANE") asserts that ISP–bound traffic should bear additional charges. Although TANE acknowledges that ISPs should not pay the access charges contained in Part 69 of the Commission's rules, this association contends that traffic to ISPs is not meeting its burden of recovering interstate costs. Specifically, TANE asserts that ISPs are avoiding their fair share of access costs by obtaining business local exchange lines at the rates in the prevailing intrastate tariffs, "although the service is used entirely for interstate traffic."[16]

GSA urges the Commission not to heed these claims that additional charges are appropriate. Traffic to ISPs should be regarded as jurisdictionally mixed because these messages, which traverse a packet–switched network, do not have unique "termination" points.[17] Different packets comprising the same message may travel over different physical paths, allowing callers to invoke multiple Internet services simultaneously, and also allowing callers to access information with no knowledge of the physical location of the service where the information resides.[18] Thus, in a single Internet communication, a user may access websites that reside on servers in various jurisdictions, or communicate–on–line with a group of users who are geographically dispersed among many locations.[19] Indeed, even the contents of a single website may be stored on multiple servers, some located in the caller's home state, and some in entirely different parts of the nation.[20]

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16 Comments of GSA, p. 20.

17 *Id.*, p. 3.

18 *Universal Service Report to Congress*, 13 FCC Rcd at 11531, 11532.

19 *Id.*

20 *Id.*

In comments speaking for firms in the information technology industry, the Information Technology Association of America ("ITAA") emphasizes that ISP–bound traffic cannot be separated into discrete interstate and intrastate components.[21] As ITAA explains:

> [n}either a subscriber, nor the subscriber's ISP, nor the serving LEC has any way of ascertaining whether the subscriber is interacting with information cached in a nearby server or in a remote server located in another state.[22]

Thus, ITAA notes, the Commission should confirm that ISP–bound traffic is jurisdictionally inseverable.[23]

As GSA has noted in its comments, the Commission exempted enhanced service providers from the access charges assessed on interexchange carriers in 1983.[24] The Commission confirmed this position in subsequent proceedings to consider enhanced services, and reiterated the position again in proceedings to evaluate the need for modifications in the system of interstate access charges to meet the requirements of the Telecommunications Act.[25] In short, the question of whether ISPs should be subject to the system of access charges applicable to common carriers has been evaluated and reviewed for more than 15 years. The underlying facts and conditions are the same, so that the conclusion remains unchanged as well — the exemption should be continued so that no additional access charges are levied for traffic bound to ISPs.

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21 Comments of ITAA, p. 2.

22 *Id.*, p. 4.

23 *Id.*, p. 2.

24 Comments of GSA, pp. 5–6.

25 *Id.*, pp. 6–8.

III. THE COMMISSION SHOULD NOT HEED REQUESTS TO REMOVE AUTHORITY FOR NEGOTIATING COMPENSATION PLANS FROM STATE REGULATORY AGENCIES.

A. Negotiation of inter–carrier compensation rates is appropriate for jurisdictionally mixed ISP–bound traffic.

The Commission posed the tentative conclusion in its Declaratory Ruling and Notice that inter–carrier compensation for ISP–bound traffic should be governed by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Telecommunications Act.[26] Several carriers dispute this conclusion, contending that the Commission should not rely on negotiations to determine compensation rates for this traffic. For example, Frontier contends that state regulators lack jurisdiction to establish compensation rates, because the traffic is jurisdictionally interstate.[27] SBC espouses a similar position.[28]

GSA urges the Commission to reject these claims. In the first place, ISP–bound traffic is not purely interstate, but jurisdictionally mixed, as explained above. Moreover, the Commission indicates in the Declaratory Ruling and Notice that there is no reason to interfere with findings by state regulators as to whether or not reciprocal compensation provisions of interconnection agreements apply to ISP–bound traffic.[29] Thus, even if the Commission has been conferred with "exclusive" authority over ISP–bound traffic, as Frontier and SBC claim, it is willing to cede part of that authority to state regulators.

Moreover, state resolution of inter–carrier compensation matters is consistent with the Commission's findings concerning Commercial Mobile Radio Services

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26 Declaratory Ruling and Notice, para. 30.

27 Comments of Frontier Communications ("Frontier"), pp. 6–7.

28 Comments of SBC Communications ("SBC"), pp. 7–9.

29 Declaratory Ruling and Notice, para. 21.

("CMRS"). In addressing CMRS, the Commission explained that state regulatory authorities maintain section 252 authority over interconnection disputes, including reciprocal compensation, even though CMRS traffic physically within a metropolitan trading area may be interstate or jurisdictionally mixed.[30] GSA urges the Commission to rule similarly in this case with respect to jurisdictionally mixed traffic bound to ISPs.

B. Agreements negotiated under the auspices of state commissions will more closely match local conditions and needs.

In addition to claiming that state regulators lack the requisite authority, several carriers assert that the Commission should play a more active role in setting inter–carrier compensation rates. For example, ICG contends that the Commission should reexamine its tentative recommendation that inter–carrier compensation rates be established "through commercial negotiations."[31] According to this firm, "The compensation rate for ISP traffic should be prescribed, not negotiated."[32]

GSA urges the Commission to reject recommendations for a national inter–carrier compensation plan. As GSA explained, negotiations driven by market forces are more likely to lead to efficient results than rates set by regulation.[33] Moreover, rates determined by such negotiations should more closely reflect local costs, patterns of use, and commercial relations.[34]

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30 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F3.d 753 (8th Cir. 1997), *rev'd in part, aff'd in part AT&T Corp. v. Iowa Utils Bd.*, 119 S. Ct 721 (1999) ("local Competition Order") at paras. 999–1026..

31 Comments of ICG Communications Inc. ("ICG"), p. 5.

32 *Id.*

33 Comments of GSA, p. 11.

34 *Id.*

AT&T addresses this point squarely in its comments.[35] This carrier observes that in the three years since the Telecommunications Act removed legal impediments to competitive LEC entry, computation of the appropriate compensation for such traffic has been a relatively straightforward process.[36] AT&T explains:

> State commissions nationwide have recognized that ISP–bound traffic has the same physical and cost characteristics as other voice and data traffic transported and terminated by one LEC for another, and applying [sections 251 and 252] of the 1996 Act, have *uniformly* approved arrangements that treat voice, ISP–bound, and all other data traffic the same for reciprocal compensation purposes.[37]

Moreover, AT&T notes, states have concluded that transport and termination charges should either reflect efficient forward–looking costs or, if the two carriers' traffic is roughly in balance, be settled through "bill–and–keep" arrangements.[38] As a participant in proceedings before state regulatory agencies to determine the rates and charges for local voice and data services, GSA concurs with these observations.

From their viewpoint as users of many carriers' services, an association of ISPs emphasize an additional point demonstrating the value of plans negotiated under the auspices of state regulators. CIX explains that state commissions should oversee the compensation arrangements between two competing local carriers because these authorities can simultaneously consider the relationship between the incumbent carrier's compensation practices and its intrastate tariff offerings to evaluate the potential for anti-competitive conduct.[39] Indeed, CIX notes that it would be difficult, and

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35 Comments of AT&T Corp. ("AT&T"), pp. 2.

36 *Id.*

37 *Id.*, (italics in original).

38 *Id.*

39 Comments of CIX, p. 3.

potential burdensome, for the Commission to examine state tariff practices comprehensively, even when these practices negatively impact local competition.[40]

In summary, dependence on procedures in sections 251 and 252 of the Telecommunications Act to develop inter-carrier compensation rates for ISP–bound traffic should provide important benefits to end users. At the national level, the need is for guidelines that are structured to ensure that compensation plans for ISP–bound traffic do not contain features that could inhibit competition for any telecommunications services.

IV. ALTHOUGH THE COMMISSION SHOULD NOT PRESCRIBE CHARGES, IT SHOULD PROVIDE DEFINITIVE GUIDELINES FOR INTER–CARRIER COMPENSATION PLANS.

A. Based on comments by several carriers, the guidelines should state that incumbent carriers must compensate competitive LECs for transport and termination of ISP–bound traffic.

The requirement for a non–discriminatory compensation plan covering ISP–bound traffic would seem to be axiomatic, but a competitive LEC reports that regional Bell operating companies ("RBOCs") and GTE have refused to pay compensation for this traffic unless ordered to do so by state regulators or courts reviewing the decisions of these regulators.[41] The requirement to develop and deploy a balanced non–discriminatory compensation plan should be a primary part of the Commission's guidelines.

RCN Telecom reports that disputes concerning compensation plans for ISP–bound traffic have been brought to state regulators for resolution on many occasions.[42]

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40 *Id.*

41 Comments of RCN Telecom Services, Inc.("RCN Telecom"), p. 4.

42 *Id.*

Moreover, there have been 30 state decisions in favor of competitive carriers to date, and no commission or reviewing court has ruled in favor of the incumbent carrier on this issue.[43] Clearly, considerable time and resources have been consumed to arrive at equitable arrangements. As AT&T observes in its comments, "No speculation is required to conclude that the incumbent carriers' incentives to sabotage the interconnection agreement process by foot–dragging and insisting on anti–competitive terms are as strong in the context of compensation for ISP–bound traffic as they are elsewhere."[44]

In view of these incentives, the interests of consumers will be protected only if the Commission's guidelines require balanced plans with equal treatment of incumbent and competitive LECs. Incumbent LECs should not be permitted to use the fact that they have more leverage in bargaining because of their control over the local telecommunications infrastructure. Moreover, as GSA explained in its Comments, guidelines should encourage parties to petition state commissions for arbitration under section 252.[45] If the state regulatory body fails to act, the Commission should assume that responsibility.

B. Inter–carrier compensation plans should reflect the structure of underlying costs.

In outlining the scope of a Federal regime governing inter–carrier compensation for ISP–bound traffic, Frontier asserts that the Commission should adopt a policy that contains three basic provisions. First, the Commission should establish a benchmark terminating compensation rate for ISP-bound traffic at some fraction of the local

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43 *Id.*

44 Comments of AT&T, p. 5.

45 Comments of GSA, p. 11

switching unbundled network elements rate.[46] Second, the Commission should rule that bill–and–keep will apply for all ISP–terminating traffic when the origination/termination ratio is severely out of balance (perhaps, 30/70).[47] Third, the Commission should not permit parties to depart from the terms of their interstate tariffs in developing alternative arrangements governing ISP–bound traffic.[48]

These proposed requirements are unduly restrictive and potentially anti–competitive. They will not maximize opportunities for competition to develop through rate structures reflecting local conditions and costs. Indeed, as GSA has explained, the Commission should not restrict the use of bill–and–keep agreements if they are agreeable to the parties concerned.[49] Moreover, inter–carrier compensation plans should reflect forward–looking costs. Therefore, if tariff rates do not reflect costs, inter–carrier compensation rates should deviate from them.

In addition, Frontier's proposal set a benchmark for inter–carrier compensation for ISP–bound traffic at some fraction of the local switching unbundled network elements rate assumes *a priori* that traffic–sensitive pricing structures accurately reflect the costs that carriers incur. However, the Commission noted in the Declaratory Ruling and Notice that (1) pure minute–of–use pricing structures are not likely to reflect how costs are incurred and (2) flat–rated pricing based on capacity may reflect costs more accurately.[50]

GSA explained in its comments that, as for all interconnection services, a fixed monthly charge is the appropriate structure for recovering the costs of dedicated

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46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

facilities used for inter–carrier connections because this structure ensures that the user will pay the full cost of the facility and no more.[51] Use of traffic–sensitive rate structures to recover costs that are significantly less variable will impair development of additional Internet services and lead to higher costs for all users. Therefore, one of the most important objectives of national guidelines is to specify that inter–carrier compensation agreements require that inter–carrier compensation plans reflect the structure of the costs incurred to provide services.

C. National guidelines should prescribe that forward–looking costs be employed as a basis for all negotiations.

In addition to requiring rate structures that match costs, guidelines should also address the nature of the costs to be employed as the standard in setting rates. GSA explained that TELRIC are the appropriate costs because they (1) simulate the prices that would prevail in a competitive market; (2) prevent incumbent LECs from exploiting their market power at the expense of competitive LECs; and (3) create the correct investment incentives for provision of any additional resources that are required.[52] To accomplish these aims, the TELRIC used to establish inter–carrier compensation should be based on the most efficient network architecture, sizing, technology and operating structure that are feasible and available in the industry.

GST Telecom makes an additional point in support of using TELRIC as the standard for pricing arrangements. Many states have recently approved relevant TELRIC for agreements covering other traffic that were negotiated pursuant to sections

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51 Comments of GSA, p. 13.

52 Comments of GSA, p. 14.

251 and 252 of the Telecommunications Act.[53] Since the functionality is similar, the same TELRIC can serve as a cost basis for ISP–bound traffic as well.

53 Comments of GST Telecom, Inc. ("GST Telecom"), p. 16.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

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I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 27th day of April, 1999, by hand delivery or postage paid to the following parties.

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